



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ECS Metals Limited

File: B-229804

Date: February 10, 1988

DIGEST

1. Protest that low quoter, under request for quotations (RFQ) issued under small purchase procedures, is entitled to the award of a contract is denied where the RFQ was issued for informational purposes.
2. Protest challenging preaward survey recommendation of nonresponsibility is dismissed as premature where there is no determination of responsibility by the contracting officer.

DECISION

ECS Metals Limited protests that it is entitled to award under request for quotations (RFQ) No. N00104-86-X-G295, issued by the Navy Ships Parts Control Center under small purchase procedures for nonelectrical lockwire. ECS contends that it is entitled to the award of a contract as the low bidder and that it did not receive award because the Navy improperly found it nonresponsible. The Navy contends that it has no obligation to issue a purchase order under the RFQ and that the contracting officer has not made a responsibility determination.

We deny the protest in part and dismiss it in part.

The Navy issued the RFQ on March 31, 1987, seeking quotations from small businesses for 1,888 spools of nonelectrical lockwire. The lockwire is used to repair critical nuclear equipment. ECS submitted the low quotation in response to the RFQ. Because the Navy did not have a documented quality history for ECS, the contracting officer

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requested a preaward survey.^{1/} A preaward survey of ECS recommended "no award" because ECS did not have a sufficient inspection and quality assurance system. After being informed of the results of the preaward survey, ECS filed an agency-level protest contesting the preaward survey determination and demanding award of a contract under the RFQ. The Navy denied ECS's agency protest as academic because the Navy was not obligated to place an order under the RFQ. On December 14, 1987, ECS timely filed this protest with our Office.

ECS first contends that it is entitled to the award of a contract under the RFQ as the low, responsive offeror. We do not agree. The RFQ, issued on Standard Form 18, states on its face that it is "a request for information and quotations furnished are not offers.... This request does not commit the government...to procure or contract for supplies or services." Unlike bids or proposals following an invitation for bids or request for proposals, quotations submitted in response to an RFQ are not considered offers which the government can accept to form a contract. Rather, the government becomes the offeror when it issues a purchase order in response to a quotation. See Federal Acquisition Regulation (FAR) § 13.108(a) (FAC 84-29).

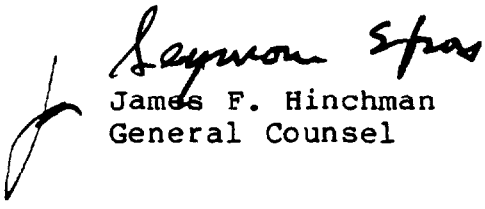
We find nothing in the record to indicate that the RFQ was issued for other than informational purposes. The government is permitted to use RFQs to obtain information when it does not intend to award a contract. FAR § 15.402(e) (FAC 84-5). Thus, there is no requirement that the government must issue a purchase order after receiving informational quotes. We deny the protest on this ground.

ECS also protests that the Navy improperly found it to be nonresponsible. The record, however, shows that there has been no determination of responsibility by the contracting officer, only a recommendation of nonresponsibility by the preaward survey team. Since there has been no determination of responsibility by the contracting officer, a protest on this ground is premature and is dismissed. Carolina Parachute Corp., B-226504.2, July 24, 1987, 87-2 CPD ¶ 79.

^{1/} ECS states that it successfully supplied the identical Lockwire to the Navy under Contract No. N00104-84-C-4201. The Navy states that at the time of the award of the above contract its Nuclear Quality Assurance Division (NQAD) did not yet exist to monitor nuclear procurements. The NQAD determines from available Navy records whether an offeror has sufficient inspection and quality assurance systems to satisfy critical nuclear requirements. If insufficient documentation exists, a preaward survey is recommended.

In any event, if the Navy were to determine that ECS is nonresponsible and to decide to withhold the issuance of a purchase order to ECS on this ground, the Navy would be required to submit the nonresponsibility determination to the Small Business Administration, which has conclusive authority to determine the responsibility of small business concerns. See 15 U.S.C. § 637(b)(7) (1982); FAR § 13.104(h) (FAC 84-28).

The protest is denied in part and dismissed in part.



James F. Hinchman

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